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May 26, 2020

BY ECF

Hon. Alison J. Nathan
United States District Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007-1312

Re: In Re Application of Benjamin Steinmetz for an Order to Take Discovery from Vale S.A., Vale Americas Inc., Rio Tinto plc, and Rio Tinto Limited pursuant to 28 U.S.C. Section 1782, Case No. 20-mc-212-AJN (S.D.N.Y.)

Dear Judge Nathan:

We write on behalf of Applicant Benjamin Steinmetz (“Mr. Steinmetz”) in response to the letter filed on Saturday night, May 23, 2020, by counsel for Vale S.A. and Vale Americas Inc. (collectively, “Vale”), and the letter filed on Memorial Day by counsel for Rio Tinto plc and Rio Tinto Limited (collectively, “Rio Tinto”).

Why argumentative letters to the Court are necessary at this stage is unclear. The only request being made of the Court is Rio Tinto’s desire for a telephonic scheduling conference, which we do not oppose (which Rio Tinto would have learned had it given us a chance to respond to its inquiry rather than submitting a letter to the Court). Vale’s letter does not make any request of the Court at all, but rather publicly recites their indignation at the application and touts the strength of arguments they promise to make to the Court in the future. We will respond to these in due course when these points are actually briefed to the Court.

Neither letter identifies any issue (other than scheduling) for the Court to address in a telephonic hearing; however, each letter tries to leave the Court with an impression that the Applicant is being dilatory in some way that the Court needs to address, without specifically asking the Court to do anything. Given that each letter leaves a confusing misimpression that there is some disputed issue for the Court to resolve at a telephonic hearing, we set forth the below to assist the Court.

May 26, 2020

Page 2

Vale's Letter

In its letter, Vale's counsel asserts that there have been "back-and-forth communications with Steinmetz's counsel with regard to service of process" and Vale's purported "need to promptly obtain all of the recordings referenced in the Yanus Declaration that accompanied the Application." By these statements, Vale appears to be trying to create an impression that the Applicant has been resistant to some effort by it to progress the matter efficiently.

What Vale's counsel curiously describes as a "back-and-forth" is actually a one-sided stream of correspondence from Vale to us over the weekend (a letter sent Friday evening, an email sent Friday night, and another letter sent very late on Saturday night, in addition to the letter filed with this Court, also on Saturday night) in which Vale's counsel repeatedly demands that Mr. Steinmetz urgently produce the recordings described in the Declaration of Dr. Yanus. The basis for Vale's demands is unclear, however, given that this action involves an application for discovery filed by Mr. Steinmetz, not by Vale.

In any event, in response to Vale's request, Mr. Steinmetz has shared the full recordings of the conversations described in the Declaration of Dr. Yanus with Vale. *See* Exhibit A (Correspondence to counsel for Vale producing the transcripts and audio files of those conversations).

Rio Tinto's Letter

If the Court would find a telephone scheduling conference useful, we do not oppose Rio Tinto's request for the same, although it would appear unnecessary as the Court can determine scheduling on the basis of this exchange of correspondence. The Applicant considers a response period of 30 days to be excessive, given that the ordinary response period for a motion or application is 14 days and for a complaint is 21 days. *See* Local Civil Rule 6.1(b); Fed. R. Civ. P. 12. In any event, the Applicant is prepared to proceed on any schedule that the Court deems appropriate.

Respectfully submitted,

/s/ Michael S. Kim

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cc: Counsel for Vale and Counsel for Rio Tinto (via ECF)